Historic, archived document

Do not assume content reflects current scientific knowledge, policies, or practices.

55
Su 7
62

UNITED STATES DEPARTMENT OF AGRICULTURE
FARM CREDIT ADMINISTRATION
WASHINGTON, D. C.

LIBRARY

QUARTERLY SUMMARY OF CASES

RELATING TO

FARMERS' COOPERATIVE ASSOCIATIONS

*

* *

Prepared for the

COOPERATIVE RESEARCH AND SERVICE DIVISION

by the

FARM CREDIT DIVISION, OFFICE OF THE SOLICITOR

under the direction of

RAYMOND J. MISCHLER, ATTORNEY

Comments on accounting aspects of tax cases by

GEORGE J. WAAS, AGRICULTURAL ECONOMIST

COOPERATIVE RESEARCH AND SERVICE DIVISION

Summary No. 53 March 1952

TABLE OF CONTENTS

QUALIFICATION FOR EXEMPTION UNDER SECTION 101 (12), INTERNAL REVENUE CODE; EXCLUDABILITY OF PATRONAGE REFUNDS FOR INCOME TAX PURPOSES

The Tax Court of the United States on December 14, 1951, decided Dr. P. Phillips Cooperative, Petitioner, v. Commissioner of Internal Revenue, Respondent (17 T.C. No. 118), Docket Nos. 26736,30849.

This case presented two issues for decision. First, whether or not the petitioner is a tax-exempt agricultural cooperative under Section 101 (12) of the Internal Revenue Code and secondly, if not tax exempt, whether amounts retained as a reserve for capital expenditures, for which revolving fund certificates were issued, represent income taxable to the petitioner.

As to the first issue, the court held that the petitioner did not qualify for exemption under Section 101 (12) because it carried on as one of its principal activities the maintenance and caretaking of citrus groves and marketed for its members fruit purchased by them near harvest from non-member producers.

As to the second question the court in this case confirmed the well-established principle that a fruit growers' cooperative, which, after distributing a part of the excess of its receipts over expenditures as cash patronage dividends, retains the rest in a reserve, may exclude from income the amount retained in the reserve to the extent that it issues, to those who contract with it, revolving fund certificates as evidence of the retained amounts, in accordance with a pre-existing contractual obligation. In applying the above principle of law to the facts of this case, the court held that the contracts in regard to marketing contained no provision requiring the issuance of revolving fund certificates for funds retained. The court concluded that since the patrons had no right to the retained amounts in connection with the marketing operation, such amounts were not excludable from income. The court held further that in regard to the caretaking activities, the caretaking contracts contained a provision requiring the issuance of revolving fund certificates for any excessive receipts over expenses and revolving fund certificates issued for such amounts were excludable from income.

Significant excerpts from the opinion of the court are quoted below:

> "Each of the nine members of the petitioner during each of the taxable years marketed, through the petitioner, some fruit grown in the grove or groves of that member. Furthermore, patronage dividends were received by each of the members as a result of that marketing in each year. The petitioner was organized and operated to that extent on a cooperative basis for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary marketing expenses on the basis of the quantity or value of the products furnished by them. However, the activities of the petitioner did not end there. Three of the members in 1946 and two in 1949 marketed through the petitioner and received

patronage dividends on fruit grown in the groves of nonmembers and purchased by the members. The petitioner makes no argument that one who merely purchased a ripe crop at harvest and marketed it through the petitioner would be a farmer, a fruit grower, or a producer within the meaning of section 101 (12). The provision does not exempt an association of such persons. The petitioner contends, in respect to the purchases by members, that the members were fruit growers and producers of the fruit and were not mere purchasers of fruit grown and produced by others. Its reasoning is that most of those purchases were bulk purchases in which the member agreed to pay a fixed price for an existing crop on the trees without regard to the quantity of fruit actually picked and packed at harvest; the member either cultivated the crop from that date to harvest or employed the owner of the grove to do that cultivating, and in some or all instances the caretaking facilities of the petitioner were availed of; the members purchasing fruit assumed the risks of a grower or producer from the date of purchase of the crop to the date of harvest; and in a real sense the member was a grower and producer of that crop.

"That contention is supported by evidence that in some instances a substantial period of time elapsed between the date of the contract of purchase and the date when picking began so that the member might have taken some of the risks and responsibilities of a grower. But, the evidence shows affirmatively that the date of one of the 1946 contracts of purchase relied upon was the day on which the fruit was picked. The member was obviously not a grower or producer of that particular crop. It amounted to only 79 boxes of fruit but the member received patronage dividends on the marketing of that fruit. Another contract in that year on which 13,064 boxes of fruit were marketed and on which patronage dividends were received was dated May 13, 1946, and the picking began and ended at dates, not shown by the record, within that same month. That might have been a purchase of ripe fruit in respect to which the purchaser was not a grower or producer. The record shows the date of all of the other contracts for 1946 and the date upon which picking began and ended, but it is impossible to tell to what extent, if any, in some of those contracts the purchaser might fairly be regarded as having taken the risks and responsibilities of the owner of a growing crop. The evidence in regard to 1949 is less favorable to the petitioner. There it shows affirmatively that the purchases of about 9,000 boxes were made after the fruit had been picked. Contracts for the purchase of about 2,000 boxes were dated on the same day on which picking ended. Contracts for over 10,000 boxes were dated from one to nine days before picking ended. Some of the contracts in 1949 were contracts in which the purchaser agreed to pay a stated amount for boxes of merchantable fruit at harvest time. The purchaser under those contracts did not take any of the risks inherent in a growing crop but only took the risk of market conditions at the time of harvest. There is no evidence as to the contract dates and picking dates for 61,935 boxes purchased by Dr. P. Phillips Company in 1949. The evidence fails

to show in regard to some of the other contracts the extent to which the purchasers might fairly be regarded as growers.

"Thus, the record shows that the marketing activities of the petitioner were not limited to marketing for growers in either year and, to that extent, the petitioner does not come within the exempting provisions of section 101 (12). Furthermore, its operation during each year included another important activity which section 101 (12) does not purport to exempt, that of maintaining or taking care of groves. That activity cannot qualify as 'purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses'. Congress did not provide exemption in section 101 (12) for a corporation marketing the products of mere purchasers and taking care of groves. The question of whether the reserves were in violation of the section and other questions argued by the respondent need not be decided.

"Although the Commissioner has held that the petitioner is not exempt under section 101 (12), nevertheless he has allowed the petitioner as a cooperative to exclude from income for tax purposes the amounts which it has distributed in cash as patronage dividends. There is no express statutory authority for this action but for many years the practice has been followed by the Treasury Department and it has received judicial sanction. The theory is that the cooperative is merely a conduit for the patronage dividends which are in effect an additional cost of goods sold by a marketing cooperative or a rebate by a cooperative which purchases goods or performs services for its members. This exclusion has been applied to amounts retained as reserves by the cooperative where, pursuant to a pre-existing obligation or liability, revolving fund certificates are issued for the amounts retained. United Cooperatives, Inc., 4 T.C. 93, and Colony Farms Cooperative Dairy, Inc., 17 T.C. ________, (October 15, 1951). The petitioner contends that the amounts which it retained for its reserves are to be excluded from income because it was obligated to issue revolving fund certificates for those amounts.

"The petitioner had a right under the laws of Florida, its charter, and its amended by-laws to retain amounts from its marketing activities without issuing any revolving fund certificates or other evidence of interest of the members therein. The original by-laws had required that revolving fund certificates be issued but they were amended to eliminate that requirement at some time not shown by the record, but possibly and therefore, presumably under the burden of proof, before these two taxable years began. The contracts in regard to marketing contain no provision requiring the issuance of revolving fund certificates for funds retained. Therefore, the petitioner has failed to establish a factual situation which would bring this case within the cited cases and the

principle of law established therein in so far as funds retained from the marketing operations are concerned. Since the patrons had no right to those retained amounts and have not received them, they could not be regarded as having contributed them to the petitioner. The situation in regard to caretaking activities is different to this extent, that the caretaking contracts contained a provision requiring the issuance of revolving fund certificates for any excessive receipts over expenses retained by the petitioner. It retained the net proceeds from caretaking for 1946 in the amount of $75,718.24 and it retained $6,680.86 from the same source in 1949. It issued revolving fund certificates for those amounts and they may be excluded from income under the two cases cited above."

(R. J. Mischler)

This is another among the several instances in which the courts have given sanction to the exclusion of patronage dividends from taxable income of an organization which has "a pre-existing obligation" to pay such dividends.

In one department this cooperative had such an obligation and in another it did not. In the latter circumstance the Court held that "Since the patrons had no right to those retained amounts and have not received them, they could not be regarded as having contributed them to" the cooperative on the theory of a constructive investment in its capital.

Tax-exempt cooperatives should take particular notice of the Court's ruling in regard to farm caretaking services rendered to producer-patrons.

(George J. Waas)

COOPERATIVE'S CAPITAL RESERVE CERTIFICATES HELD TAXABLE AT FACE VALUE TO RECIPIENTS IN YEAR OF RECEIPT

The Tax Court of the United States on January 18, 1952, decided Estate of Wallace Caswell, et al., 17 T.C. No. 143.

The petitioners in this case were members of Turlock Cooperative Growers Association (referred to in the opinion as "Turlock" or "The Co-op") through which they marketed their peaches. Under the marketing plan, the peaches were placed in a pool with peaches of like kind, grade and classification produced by other members. When the peaches were sold and the pool was closed, the net proceeds, less an association charge, were distributed to the members on the basis of participation. The association charge, after payment of general organization and association expenses was carried into a capital reserve and, in addition to the cash distributed, the members also received on the basis of participation in the selling pool, interest bearing certificates representing their interests in the capital reserve, which certificates they were free to sell, exchange and assign.

On these facts, the Court held that (1) the petitioners, upon the receipt of certificates, received and realized income to the extent of the fair market value of the certificates received, and (2) the fair market value of the certificates was equal to their face value.

The following excerpt from the opinion sets forth the reasoning of the Court:

> "The argument of the petitioners is twofold, the first contention being that since they reported their income on the cash basis and since at no time during the taxable year did they actually receive or become unqualifiedly entitled to receive payment of the moneys in the commercial reserve covered by the certificates issued, they did not constructively, or otherwise, receive or realize income by reason of their receipt of the certificates. Their second contention is that in any event the certificates had no fair market value when issued and accordingly there was upon their receipt no realization of gain under section 111 (b) of the Internal Revenue Code 1/ as determined and claimed by the respondent.

"1/ SEC. 111. DETERMINATION OF AMOUNT OF, AND RECOGNITION OF, GAIN OR LOSS.

* * * *

(b) Amount Realized.-The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received."

"As to the argument on constructive receipt, it is to be noted that there are statements in some of the decided cases which may well be regarded as authority for the proposition that moneys carried to capital reserves by co-operative associations under comparable terms and conditions have already been constructively received by the members of the Co-op since it is said that such funds in reality belong to the members and not the Co-op. San Joaquin Valley Poultry Producers Association v. Commissioner, 136 F. (2d) 382; Colony Farms Cooperative Dairy, Incorporated, 17 T.C. ________; George Bradshaw, 14 T.C. 162; and Harbor Plywood Corporation, 14 T.C. 158. And, there might even be stronger reasons for applying such a rule in this case since for 1945, at least, Turlock was exempt from income tax under section 101 of the Internal Revenue Code, whereas some, if not all, of the co-ops involved in the cases cited were not exempt. In Dr. P. Phillips, Cooperative, 17 T.C. ____________, however, a co-operative which was subject to tax, we declined to extend the conduit theory to cover the moneys carried into a reserve where it was not shown that the certificates issued against the reserve were issued 'pursuant to a pre-existing obligation or liability', and in George Bradshaw, supra, after acknowledging the conduit doctrine, we held that it was the issuance of the notes by the Co-op which fixed the rights of the patrons in the moneys covered thereby and not the closing by the Co-op of the transactions from which the moneys in question were derived.

"In the instant cases the respondent does not rely on the conduit theory nor on any other variation of the theory of constructive receipt but has determined and contends that the Caswells in payment for their peaches, and in addition to the cash distributed, received other property, namely, the certificates, and under section 111 (b) supra, received and realized income to the extent of the fair market value of the certificates at time of issue, and further that the fair market value of the certificates was equal to face. It is thus apparent that no issue has been joined here involving any question of constructive receipt of the moneys in the commercial reserve.

"The decision, in our opinion, must be for the respondent. Whether the certificates received be likened to debentures or evidences of indebtedness or to shares of preferred stock or be said to evidence a more direct ownership of the designated amount of the commercial reserve, they were none the less securities evidencing valuable rights or interest in the commercial reserve which belonged to the Caswells and which without restriction, other than that the transfers thereof be recorded on Turlock's books, could be sold, traded in or assigned and not only could such certificates be assigned and transferred but the record indicates that transfers thereof were usual and customary, six of such transfers having been recorded in 1944 and thirteen

during 1945, the taxable year herein. And, while they had no specified due date or dates they bore interest at 6 per cent per annum on the face amount and there is no showing or claim that the interest was not regularly paid when due. Furthermore, the record also indicates a practice on the part of Turlock of retiring or redeeming outstanding certificates at face before too many years had elapsed. Presumably, subsequent additions to the commercial reserve from the proceeds of later crop pools would adequately provide for the capital needs of the association and thereby permit the prior certificates to be retired or redeemed. It is our opinion, and we conclude, that the certificates meet the requirements of section 111 (b), supra, and that they represented income to the petitioners at the time of issue to the extent of their fair market value.

"As to the fair market value the decision also must be for the respondent. The petitioners rest their claim of no fair market value on three things (1) that the certificates had no specified due date, (2) that although assignable, they were not negotiable instruments, and (3) that two local bankers, if called as witnesses, would have testified that from a banking standpoint the certificates were not classified as marketable, that their purchase would have been on a speculative basis and in instances where they were accepted as collateral for loans they were accepted as 'additional collateral' only.

"To the contrary, Turlock's balance sheet gives every indication that the value back of the certificates covered them at face. The interest provided was at a very attractive rate. There was no indication that Turlock had ever defaulted on interest payments and it has an apparent record of redemption of such certificates without undue delay. Furthermore, in light of the transfers of certificates recorded on Turlock's books in 1944 and 1945, we think it reasonable to assume that the certificates were traded and exchanged even though the consideration or occasion for the transfers recorded is not shown. It is shown also that Turlock was known in the community as being in sound condition and well managed. In such circumstances we think it clear that the certificates from the date of their issuance not only had fair market value but the record gives no leeway for saying that such fair market value was less than face. See and compare George Bradshaw, supra, and P. Phillips, et al, 17 T.C. ________."

(R. J. Mischler)

In deciding that the patron of the Turlock Cooperative must report for income taxation his share of capital reserve certificates the Court has supported the past practice of the Bureau of Internal Revenue.

A ruling to that effect was issued by the Deputy Commissioner of Internal Revenue as Information Release No. 2 dated April 13, 1950. In that release it was stated in part as follows:

> "Distributions by cooperatives in the form of capital stock, or in any form other than cash, should be included in the gross income of the patrons to the same extent that such distributions would be included if paid in cash."

The last clause seems to be somewhat more strict than the Caswell decision since the Court there could be construed as leaving the impression that in some other cases the fair market value of a scrip distribution might be decided as less than its face or issued value. Whether this is a correct impression is, of course, debatable.

(George J. Waas)

ANTITRUST VIOLATION INVOLVING GROCERY COOPERATIVE

In Order No. 5482, issued January 7, 1952, the Federal Trade Commission ordered Carpel Frosted Foods, Inc., Washington, D. C., to stop making payments to buyers or their representatives in violation of the brokerage section of the Clayton Act in connection with the sale of frozen food products, and to discontinue granting advertising or promotional payments to purchasers unless they are available to all competing purchasers on proportionally equal terms. The order also prohibits District Grocery Stores, Inc., Washington, D. C., from receiving payments which violate the brokerage section of the Act.

Carpel is engaged in the sale of frozen foods to retailers. DGS is a nonprofit corporation which acts as a purchasing cooperative for 275 retail grocers in the Washington area.

In August 1944, the findings state, Carpel and DGS entered into a contract whereby Carpel agreed to pay DGS four percent on all sales of frozen foods to DGS stores, the minimum annual payment to be $5,000. Among other things, DGS agreed to cooperate with Carpel in seeking to increase sales of Carpel products to DGS stores, to include Carpel products in its advertising and to refrain from sponsoring or advertising competitive products.

Although, according to testimony in the record, this contract was rescinded before it was put into operation, the findings point out that Carpel and DGS entered into a new contract in November 1944. Under its terms, Carpel agreed to pay DGS $5,000 annually in return for certain services to be performed by DGS in promoting the sale of Carpel Products to DGS stores and in promoting their subsequent resale. This contract was carried out until its cancellation shortly after filing of the Commission's complaint in 1947. The findings add:

> "Part of the annual payment so made to District Grocery Stores, Inc., by Carpel Frosted Foods, Inc., was in consideration of 'services' by the former in promoting and increasing purchases by its owners from the seller. Specifically, these 'services' consisted of furnishing the seller with the list of all its members, advising as to the brands of frosted foods each carried, advising when a member decided to put in a line of frosted foods, keeping the list current, and bulletinizing its members at least once each week with information about, and urging the purchase of, Carpel's merchandise. There was thus a payment made by the seller to an agent or intermediary of the buyers, acting for and on behalf of the buyers and under the buyers' direct or indirect control, in the nature of a commission or brokerage, the purpose and effect of which was to increase, or prevent decrease of, purchases by the buyers from the paying seller."

This arrangement was accordingly held to be in violation of section 2 (c) of the Clayton Act.

The other services performed by DGS under the contract related to advertising and promotional services designed to push the resale by DGS stores of Carpel products to consumers, the findings state. The contract called for DGS to assist in displaying Carpel products to good advantage and in posting promotional streamers furnished by Carpel; and to include Carpel products in DGS newspaper advertisements, the cost of which was to be borne by Carpel.

In contracting to pay, and paying, DGS for such services, the Commission held, Carpel violated section 2 (d) of the Clayton Act because it failed to make such payments available on proportionally equal terms to its customers who competed with DGS members. These competitors included, according to the findings, four grocery chains, another cooperative and approximately 350 independent grocers.

Carpel discussed with the chains and with the other cooperative the possibility of granting them a promotional allowance, according to the findings, but no such arrangements were worked out. As to the 350 independent grocers, constituting the bulk of Carpel's customers, the Commission said, "such payments were not made available on proportionally equal terms, or on any terms."

Commenting on Carpel's defense that the contracts with DGS were executed in good faith to meet a competitive offer, the Commission said:

> "There is no evidence that this vague offer of five percent of an unknown sales volume, for an unknown time, by an unknown competitor, for unknown services, was a continuing one down to the execution of the contract of November 30, 1944. The evidence, on the contrary, indicates it had been rejected or dropped shortly after August 28, 1944, and hence was no longer an impelling threat. Payments contracted for in the second contract were not related to sales volume.
>
> "From these facts it is concluded that Carpel Frosted Foods, Inc., entered into these contracts more as an aggressive bid for long-range business than as a defensive act to prevent specific loss of sales. The Commission finds, therefore, that the respondent Carpel Frosted Foods, Inc., has not rebutted the prima facie case made against it by a showing that the said contracts were entered into by it in good faith to meet a competitive offer by a competitor."

Excerpts from the opinion of the Commission follow:

> "The respondents in this matter are in two categories. Carpel Frosted Foods, Inc., which for convenience we will refer to as Carpel, is a producer and seller of frozen food products; and District Grocery Stores, Inc., which we will identify as DGS, is a corporation formed by and representing a group of 275

independently owned and operated grocery stores, many of which buy frozen food products from Carpel. The complaint charges Carpel with violations of subsections (c) and (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, and DGS is charged only with violations of subsection (c).

"The Commission has found that Carpel, the seller, has granted to DGS, the intermediary acting on behalf of the buyers, certain fees or allowances for promoting and increasing purchases of Carpel products by the grocery store members of the DGS group; and that DGS has received such fees or allowances. These were in the nature of and in lieu of brokerage, and the Commission has found that the paying and the receiving of the fees and allowances under those circumstances are in violation of Section 2(c) of the Clayton Act. It is only in this respect that we have found any violation of law by DGS. No violations by any of the individual grocers who are members of DGS have been found, and no such grocers are named as respondents in this proceeding.

"The Commission has also found that Carpel has engaged in an additional violation of law. This involves the payment to DGS, the representative of the buyers, of certain sums of money as compensation for advertising and promotional services in connection with the resale of Carpel frozen food products by the individual retail grocers who are members of DGS. This violation occurred, not because the payments were made, but because Carpel failed to make such payments available on proportionally equal terms to or for the benefit of other buyers in competition with DGS members. Because of this failure the payments to DGS violated subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

". . . . These are specific violations of the statute, and we know of no law or public policy which gives to businessmen of any class or size immunity from the requirements of the law or which condones discriminatory practices in conflict with statutory provisions. The law applies alike to the chains, to groups of independent grocers who operate together, and to any single grocer, large or small, who may engage in unlawful practices. This Commission is without authority to exclude from the operation of the law the practices of any individuals or groups who may seek or obtain advantages over their competitors by unlawful means.

* * * * * *

"The activities of DGS in inducing its members to handle Carpel products in preference to competitive products constituted an important consideration for the compensation which it received from Carpel. These activities were equivalent to the functions

of brokers, and the compensation for them was in lieu of brokerage. Since DGS was acting on behalf of the buyers, it was unlawful under Section 2(c) of the Clayton Act for it to receive compensation from Carpel in lieu of brokerage. DGS was no more entitled to receive compensation for activities of this nature than a chain store company would be entitled to receive compensation from the seller for requiring the individual stores in the chain to stock a particular line of merchandise.

"It is urged that under the arrangement with Carpel the neighborhood grocer was given the trained assistance of professional merchandisers and was put in the same class with chain stores in selling to consumers, and that the Commission has condemned these aids to small business as the exclusive prerogative of the broker class. The only payments in lieu of brokerage involved in this proceeding are those which represented compensation to DGS for inducing its members to purchase and stock Carpel products. The balance of the payments to DGS by Carpel were for advertising and promotional services facilitating the resale of Carpel products to the consuming public by DGS members. Payments for both types of activities were covered by the same contract and made in one lump sum, but the activities were of a distinctly different character and involved important differences in their competitive and legal effects. The payments by Carpel to DGS for advertising and promotional services were for the purpose of stimulating the resale of Carpel products to consumers <u>after</u> the products reached the retailer's store. Such payments had nothing to do with brokerage or with 'the prerogatives of the broker class,' and they did not involve violation of subsection 2(c) of the Clayton Act, as amended.

"Payments for advertising and promotional services are not unlawful, per se, under the provisions of subsection 2(d) of the Clayton Act, as amended. They were unlawful here only because they were not made available on proportionally equal terms to or for the benefit of others engaged in the resale of Carpel products in competition with DGS members. The record shows that Carpel's customers include more than 300 independently owned and operated retail grocers who are competitive with the DGS stores. No allowances or payments similar to those made to DGS were made or offered by Carpel to any of these small grocers who do not enjoy the advantages of combined operations. Through these discriminatory payments to DGS for advertising and promotional services its members received substantial advantages over their competitors engaged in reselling Carpel products. This is a discrimination specifically prohibited by the Robinson-Patman Act."

Commissioner Lowell B. Mason dissented.

(R. J. Mischler)

PAYMENTS TO MILK COOPERATIVES
UNDER AGRICULTURAL MARKETING ACT OF 1937 INVALIDATED

In Brannan v. Stark and Dairymen's League Cooperative Association v. Stark, (20 LW 4136; ________ S. Ct. ______) decided March 3, 1952, the Supreme Court of the United States by a four-three decision (two Justices not participating) held that the Agricultural Marketing Agreement Act of 1937 does not authorize the Secretary of Agriculture to provide in a milk marketing order for the deduction of certain sums of money from the producers' settlement fund and the payment of such amount to cooperative associations; such payments not being justified as remuneration for services performed for the market by cooperatives.

This litigation stemmed from 1941 amendments to the Boston Order, and has been going on for some time (for earlier discussions see Summary No. 21, p. 16; Summary No. 48, p. 22; and Summary No. 49, p. 7). The majority opinion states that statutory authority for the payments is lacking because they are not incidental to sections 8c(5) and (7) of the Act (50 Stat. 246, as amended, 7 U.S.C.§601, et seq.), but are inconsistent with section 8c(5)(B). The dissent is quite vigorous. The following brief quotation from the dissenting opinion of Justice Black will be of particular interest to cooperatives:

> "Congress intended cooperatives to be what they actually have been--the backbone of the farm market system and the dynamo by which that system functions. Without them, many think that program would have been a flop; with their help comparative peace has now come to an industry that in the twenties and early thirties was divided into fighting factions engaging in bitter warfare and bloodshed on the nation's highways. Regardless of the consequences, however, the majority's body blow to cooperatives would be justified if required by congressional command. But Congress has expressed its desire precisely to the contrary. This is shown, I believe beyond all doubt, by the language, history, background and administration of the marketing laws.
>
> "I feel deeply that the Court's action in this case checkmates the congressional will, unjustifiably inflicts a grievous wrong on cooperatives, and plays havoc with a national farm policy that is working peacefully and well. The judiciary should not cavalierly throw a monkey wrench into its machinery."

(R. J. Mischler)

APPEAL ARGUED IN MILK MARKETING CASE

Oral argument was recently presented in an appeal in Babcock Dairy Company v. Brannan before the Federal District Court at Toledo, Ohio. This appeal was taken by the plaintiff from a decision by the Judicial Officer under section 8c(15)(A) of the Agricultural Marketing Agreement Act of 1937. The issue involved is whether a milk marketing order may legally require handlers of milk to pay cooperative associations for milk purchased from members of such associations and prevent thereby direct payments to the members.

(R. J. Mischler)

GROUP HEALTH COOPERATIVE WINS ACTION AGAINST LOCAL MEDICAL SOCIETY

In Group Health Cooperative of Puget Sound v. King County Medical Society, et al., (1951, Wash.) 237 Pac. 2d 737, the Supreme Court of Washington held that an injunction would issue enjoining those defendants who had joined in a combination to restrain competition in respect of contract medicine from engaging in certain conduct against plaintiffs in furtherance of the combination. The court found that the evidence was sufficient to show that defendants engaged in conduct excluding the cooperative's physicians from the medical society, discouraging members of the society from consulting with the cooperative's physicians, and excluding the cooperative's physicians from other hospitals in the county. In reaching its decision the court relied heavily on the so-called Group Health cases which arose in the District of Columbia and culminated in American Medical Association v. United States, 317 U.S. 519, 63 S. Ct. 326, 87 L. Ed. 434. (See Summary No. 17, p. 17.)

(R. J. Mischler)

WHAT CONSTITUTES OPERATION OF A "TERMINAL MARKET"?

In Michigan Unemployment Compensation Commission v. Appeal Board of Michigan Unemployment Compensation Commission, et al., (1952, Mich.) 50 N.W. 2d 755, the court had under consideration the question as to whether defendant, Crown Onion Shippers, Inc., was a "terminal market" so as to be excluded from the "agricultural labor" exception of the Unemployment Compensation Act of the State.

The facts were that Crown bought onions from growers in the field or at its warehouse, and its sole customer was a wholesale dealer in onions. The onions purchased were stored by Crown in crates in its warehouse until they were sorted, graded, and packed for market. Such operation was a necessary incident to preparation of the onions for market. On these facts it was held that the Crown warehouse was not a "terminal market" and Crown was exempt from the Unemployment Compensation Act on the ground that its employees were engaged in "agricultural labor."

(R. J. Mischler)